

CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is entered into this 17th day of July 2023 by and between City of High Point, North Carolina (“High Point”) and CDM Smith Inc. (“CDM Smith”) (individually each a “Party” and together the “Parties”).

WHEREAS, CDM Smith, pursuant to a Master Agreement for Professional Services (“Agreement”), dated March 26, 2018, with High Point, was authorized by a Scope of Services Supplemental Agreement, dated November 22, 2019, and Scope of Services Supplemental Agreement, dated May 5, 2020, and a First Amendment to Professional Services Contract, dated January 8, 2021, to perform certain design services for the Richland Creek Aerial Sewer Replacement Project (“Project”); and

WHEREAS, CDM Smith, was authorized by a Second Amendment to Professional Services Contract, dated September 14, 2021, to perform certain construction administration and inspection services for the Project; and

WHEREAS, High Point, following public bidding, awarded the construction of the Project to Garney Companies, Inc. (“Garney”); and

WHEREAS, after installation of certain expansion joints, it was observed that the installed steel pipe constricted during cold weather and damaged the pipe boots; and

WHEREAS, it was discovered that certain restraints were not included in the design of above ground expansion joints, and CDM Smith recommended the installation of reinforced concrete and welded steel anchors (“Anchors”) to fifteen of the sixteen aerial sewers to prevent further constriction of the steel pipe at the manholes; and

WHEREAS, High Point and Garney executed Change Order No. 8 to the High Point/Garney contract in the amount of \$834,276.74 to compensate Garney for costs related to the construction of the Anchors and associated sewage by-pass pumping; and

WHEREAS, certain disputes have arisen between the Parties with respect to responsibility for the additional costs incurred by High Point to address the construction of Anchors; and

WHEREAS, this Agreement is entered into for the purpose of compromising and settling a dispute between the Parties relating to the Project and to avoid time-consuming litigation; it does not and shall not be construed as an admission that any conduct of the Parties was wrongful, unlawful, negligent, or violative of any statute or regulation or common law.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and the recitals set forth above, it is agreed by and between the Parties that:

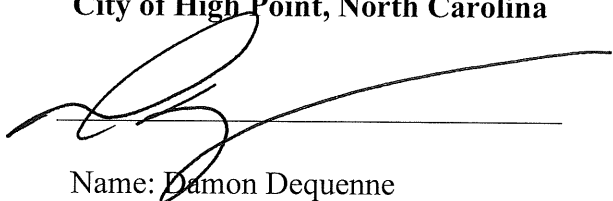
1. CDM Smith agreed to and provided a modified design for the Anchors for the Project.
2. CDM Smith agrees to and shall provide High Point a credit of \$256,569.20 on the remaining amounts billed to the Second Amendment to Professional Services Contract.
3. High Point agrees that if Garney's schedule extends to the point that CDM Smith exhausts the Second Amendment to Professional Services Contract upper limit funds of \$857,291.00 the City will compensate CDM Smith for our additional costs for construction administration and inspection services.
4. The Parties hereby release, relinquish, waive and forever discharge the other, and their heirs, successors, representatives, assigns, officers, directors, shareholders, members, partners, managers, agents, employees, independent contractors and attorneys and each of them of and from any and all claims, debts, liabilities, demands, obligations, costs, expenses, damages, actions, and causes of action of whatever kind or nature, whether known or unknown, based upon, arising out of or connected with any manner whatsoever the: (1) cost to develop a modified design for the Anchors; and (2) construction of the modified design for the Anchors including without limitation any material, labor, equipment, construction delay impacts and by-pass pumping costs. This Agreement only limits the rights and remedies of the Parties related to the apportionment of costs for the Anchors and does not limit any other rights or remedies of the Parties related to the Project as a whole.
5. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provisions herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.
6. This Agreement is made and entered into in the State of North Carolina and shall be interpreted by the laws of that state.
7. This Agreement contains the entire agreement and understanding of the Parties concerning the dispute and the resolution of the dispute relating to the Project and supersedes and replaces all prior negotiations and proposed agreements, written and oral concerning the resolution of the dispute relating to the Project.
8. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by agreement in writing.

9. Neither Party shall make any disparaging remarks, or any remarks that could reasonably be construed as disparaging in a public forum, regarding the other Party, its subsidiaries, or its or their officers, directors, employees, stockholders, representatives, or agents.
10. To the extent permitted by North Carolina law, the Parties agree to keep the fact and terms of this Agreement confidential, except as necessary to carry-out their respective business functions, or unless a Party is otherwise ordered by a court of competent jurisdiction. Disclosure is also allowed by one Party if prior written consent is obtained from the other Party.

IN WITNESS WHEREOF, the Parties warrant and affirm they have the necessary authority to bind the Parties hereto on the date indicated above.

City of High Point, North Carolina

CDM Smith Inc.



Name: Damon Dequenne

Name: David Collins

Its: Assistant City Manager

Its: Senior Vice President

Preaudit Certificate

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Bobby Fitzjohn, Finance Officer